Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

SHAHEED TAALIB'DIN MADYUN,
Petitioner,

v.

LT. KIRBY LINJER, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

SHAHEED MADYUN #75225
KMCI INMATE MAIL
PO BOX 282
PLYMOUTH, WI 53073-0282

Petitioner pro se

April 16, 2010

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890 5001

QUESTION PRESENTED

Whether a state prisoner who abided strictly by 42 U.S.C. § 1997e(a) amendment on exhausting all "available" administrative remedies when he filed a timely inmate complaint within the time frame of 14 days as provided by Department Rule under DOC § 310.09(3); where the Prison Warden provided a sworn affidavit for all the parties to the effect of affirming inmate's position on whether he had exhausted the only available, or existing prison policy on exhaustion, informing the Court, Defendants, and Plaintiff Inmate that during the time the prisoner filed his complaint in February of 2002, Wisconsin did not have any administrative policies requiring the prisoners to appeal a rejected complaint to the wardens, and the filing of the complaint was exhaustion of all available remedies regardless of whether the complaint was rejected or not; is an inmate denied a constitutional right under Amendment XIV Section 1, to seek redress under 42 U.S.C. § 1983, when the District Court expands on 42 U.S.C. § 1997e(a) by requiring a prisoner who was almost beaten to death by correctional staff and is permanently disfigured and crippled, to exhaust newly created administrative remedies that were not in existence in February of 2002, and became effective January 2, 2003, with the unrealistic requirement of having a prisoner do a timely appeal to the Warden eleven months later from the time the new law was passes, but within 10 days from the February 2002 date of incident before March 10, 2003, which is impossible for anyone to do; does this new dimension to 1997e(a), as created by the District Court violate a prisoner's right to utilize 42 U.S.C. § 1983 if a prisoner is permanently barred from

courts if he cannot do the impossible by anticipating the laws the State Legislature will create 11 months in the future after his initial exhaustions of all "available" administrative remedies?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following identifies all of the parties appearing here and before the United States Court of Appeals for the Seventh Circuit:

The Petitioner is Shaheed Taalib'din Madyun #75225, a pro se litigant inmate housed at the Waupun Correctional Institution, at PO Box 351, Waupun, Wisconsin 53963-0351.

The Respondents are Lt. Kirby Linjer, Lt. Keller, John Doe #1, John Doe #2, and Lt. Kuster, all correctional officers at the Oshkosh Correctional Institution, the place of the beating.

Dismissed respondent-defendants are Judy Smith, Angie Woods, Co. II Lemon, Co II. Carol Cook, all Oshkosh Correctional Institution staff members, where Shaheed Taalib'din Madyun was beaten.

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DECISIONS BELOW

The decision of the United States Court of appeals for the Seventh Circuit is reported as Madyun v. Linjer, et al., 333 Fed. App'x 132, 2009 U.S. App. LEXIS 22305 (Oct. 9, 2009). It is cited as Case No. 08-4003 of 2008, and a copy is found at 1a. The order of the U.S. District Court for the Western District of Wisconsin is not reported. A copy is found at 11a. The Order of the U.S. District Court for the Eastern District of Wisconsin is not reported. A copy is found at 24a.

JURISDICTION

The judgment of the United States Court of appeals for the Seventh Circuit was entered on October 9, 2009. Petitioner filed petition for Rehearing En Banc on October 28, 2009, and the Court issued an order denying same on December 15, 2009. A copy of that order is found at 40a. Jurisdiction of this matter is conferred on the Supreme Court by 28 U.S.C. § 1251(a)(b)(2); 28 U.S.C. § 1254(1); and 28 U.S.C. § 1291.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

1. This case involves Amendment XIV to the United States Constitution, which provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.
>
> Section 5. The Congress shall have power to enforce by appropriate legislation, the provisions of this article.

2. The Amendment is enforced by Title 42, Section § 1983, of United States Code:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State, Territory, or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding, for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

3. The Amendment in question that is being violated or misapplied by the District Court and affirmed by the Seventh Circuit Court of Appeals is 42 U.S.C. § 1997e(a), which provides:

> "...no action shall be brought with respect to prison conditions under 1983 of this title, or any other federal law, by a prisoner confined in any jail, or other correctional facilities until such administrative remedies as are available are exhausted..."

STATEMENT OF THE CASE

A. Facts

The petitioner Shaheed Taalib'din Madyun's complaint alleged that he was a prisoner in Wisconsin who is a well-known jailhouse lawyer who had challenged prison conditions for over 35 years, and represented hundreds of prisoners on a range of issues relative to incarceration or criminal appeals. The prison administrations, and one member of the Wisconsin justice Department decided that a prisoner of Madyun's caliber of litigious determination was very dangerous to the proper functions of Wisconsin's prison system and agreed to move him from prison to prison (maximum) unilaterally and disrupt his ability to litigate for himself, or for other inmates. (Ltr. to Charles Hoomstra, Wisc. Dep't of Justice, dated June 23, 2000; 7th Cir. No. 08-4003, R. 22, Ex. 3.) He was then transferred from the Green Bay Correctional Institution in July of 2000, to the Columbia

Correctional Institution and placed directly in segregation without a conduct report or any allegations of rule violations. That institution released Madyun from segregation, refusing to be part of the conspiracy to maintain him in segregation simply because he exercised his right to access to the Court. However, they were in agreement to continue the unilateral transfers to keep Madyun off balance and prevent his legal activities. Six months after he was sent to Columbia Correctional Institution, he was again packed up and transferred to Oshkosh Correctional Institution and placed in segregation overnight. Only moments after arriving at Oshkosh, three supervising officers, Lieutenants, approached Madyun to tell him that they did not tolerate inmate litigators to operate in their facility, and threatened Madyun to be placed back in their segregation unit. Madyun personally reported the threats to the prison warden, Ms. Judy Smith, and her deputy warden, Fred Nelson, during the orientation period. Shortly after making the reports to the warden and her deputy warden, Madyun was again placed back in segregation and charged with several disciplinary offenses by prison officials. While in segregation officers made it clear that the policy of using unilateral transfers from prison to prison to stop Madyun's legal activity would stop. They would now be using force to get Madyun to stop. Staff started putting ground up razor blades in Madyun's food with medication mixed in it. When Madyun become ill from consuming such items, he began throwing up blood and foaming from the mouth. A high-ranking official, the Unit Manager, Ms. Angie Wood, was present when this was done to Madyun and personally observed him throwing up and bleeding from the

throat, crying in pain. This "high-ranking" staff member then confiscated Madyun's food tray containing the ground up razors and left saying she was going to investigate the matter by talking to her staff who fed Madyun. She never returned, and all medical treatment was denied to Madyun. A few days later a fire was set on the Unit, and all other inmates, with the exception of Madyun were either released from their cells to safety, or their cell trap-doors were opened for air to get in the cell to allow them to breathe. The defendant in this case, Lt. Kirby Linjer, had instructed his officers not to open the trap-door of Madyun's cell, and allowed Madyun to remain in the fire/smoke filled cell which, as intended, put Madyun in the hospital suffering from smoke inhalation after being found on his cell floor by a different shift of officers hours later. Madyun filed an inmate complaint on the fire incident. He was released from segregation and continued trying to get something done about the attempts on his life by the prison staff. He was again threatened by staff to stop pursuing the matter. He continued, and again, he was placed in segregation for no other reason than trying to make his complaints. But this time Madyun was afraid for his life. So he wrote a letter to the warden and a prisoner expressing his fears. Lt. Kuster intercepted the letters and came to Madyun's cell with another officer to make it known to Madyun that things were about to really get nasty. Lt. Kuster and the other officer took Madyun from one segregation section to a section where other inmates could not see his cell, or what was happening in his cell. Lt. Kuster allowed the other officers to take Madyun to the cell. They were all wearing all black S.W.A.T. uniforms. After everyone entered the building, once inside, Madyun observed

the Deputy Warden, Fred Nelson, alone with Lt. Linjer, Lt. Kuster, and several officers Madyun recognized by sight only. Madyun assumed that there had been trouble in another unit. Lt. Kuster was waiting for the other officers to bring Madyun into the building. He then instructed them to place Madyun in cell number 24. Lt. Kuster and the other officers walked Madyun to cell number 24 at the very end of the segregation unit hall where no one can, even if they tried, see what was going on down there. Once in the cell Madyun laid down to sleep. As he was dozing off, he was awakened by what sounded like a back door open and a lot of foot movement outside of his cell door. Madyun then heard shutters on the other prisoners' cells being shut, and a voice stating, "Open cell number 24". The lights were still off in Madyun's cell. The door opened, Madyun turned over on the bunk to see what was happening. He then observed three to five black uniforms that he had seen segregation officers wearing when he first entered the segregation unit. But those individuals were not only wearing black suits. They were now wearing black ski masks too. They jumped on Madyun and began beating him, hitting him in the face repeatedly, picking him up and viciously body slamming him, busting his head. All of this ribs on his right side were kicked in; him molar tooth was kicked so hard that it split down to the root. They viciously jammed a night stick up his rectum and completely dislodged his colon, turning his rectum inside out. His liver was damaged, he was kicked so hard in his head that several disc slipped in his neck and his back that it rendered him temporarily paralyzed. Officers voiced their intents to kill Madyun, but instead left him in a pool of his own blood lying on his cell floor. Soon thereafter,

Madyun filed an inmate complaint about the beating. 7th Cir. No. 08-4003, R. 22, Ex. 1a-1i, Complaint dated Feb. 28, 2002. And just like before, with the razors in his food, the complaint staff would not file a complaint for him, and rejected it without assigning a file number to it to allow some type of an appeal. A few days later after filing the complaint, the prison complaints examiner came to Madyun's cell and made threats that Madyun would be hurt again if he continued to complain about the beating. Madyun then filed a complaint with the warden about the complaint examiner making such a threat. A day later, another officer, Co. II Carol Cook, came to Madyun's cell and cuffed him through the door slot. Once cuffed, she snatched on the cuffs pulling Madyun's face into the cell door with her weight and feet propped against the door, pulling Madyun's arms until both of his wrists were broken open. She made it known that she was doing it because Madyun had again made a complaint to the warden's office about the beating. And, again, Madyun was denied medical treatment by officers on that shift. Both of Madyun's hands swelled to triple their size from the cuffs, to the point he could not ball up his hands. When shift changed, and different officers came into segregation unit, and again saw that Madyun was in a battered condition, they decided that they had to get involved even if it meant being fired, as they made the conclusion that fellow officers were involved in trying to kill Madyun. Officers notified the Health Service Unit of Madyun's medical condition and rushed him there for medical treatment. They filled out incident reports and filed them with the Institution's Security Department. The warden's office was notified as well. Madyun filed timely complaints on every incident of violence

that had been done against him by staff, and filed them in the manner pursuant to the only available department rules that allowed for exhaustion of "Available" Administrative Remedies. The prison staff at the Oshkosh Correctional Institution assigned to do all investigations of inmates complaints refused to file the complaints submitted by Madyun, and simply stamped the complaints with the word "REJECTED" on them without assigning a DOC number to them to allow any further review of their actions.[1] Even though Madyun knew he could not appeal the complaints unless an assigned number was attached to the complaints, Madyun tried to appeal anyway to get the Corrections Complaint Examiner (hereinafter CCE) to review his filed complaints.[2] Once the CCE refused to review the rejected complaints on appeal, there were no other "available" administrative remedies such as appealing to the warden during that period in time for March 2002. Affidavit of Judy P. Smith, dated Aug. 25, 2005. Madyun had thus exhausted the only available administrative remedy that Wisconsin DOC had to offer prisoners, and his only available avenue of seeking redress was by filing a lawsuit in federal or state court.

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[1] See 7th Cir. No. 08-4003, R. 22, Ex. 1a-1i, Complaint dated Feb. 28, 2002, filed about the vicious beating officers did to Madyun.

[2] See 7th Cir. No. 08-4003, R. 22, Ex. 8, handwritten note of Apr. 25, 2002, form noting no complaint number listed on form, Complaint, etc., Madyun's attempts to do an appeal of the rejected complaint to the CCE, and their denial due to the prison staff refusing to assign a number to the complaint.

On April 7, 2003, Madyun filed a Civil Rights Action in the Eastern District of Wisconsin, alleging violations of his Civil Rights pursuant to 42 U.S.C. §§ 1983 and 1985, in Case No. 04-C343. On November 29, 2004, Judge William Griesbach issued and order partially granting summary judgment to defendants based on Madyun's inability to properly identify his documents he claimed as offer of proof showing exhaustion of all available remedies. (Pet. App. 32a) On December 27, 2005, the Judge dismissed the case in its entirety because Madyun's offers of proof were misunderstood by the Court, and the Judge ruled the Defendant's summary judgment motion was granted, dismissing the case altogether. (Pet. App. 24a) As Madyun was not able to explain the impossible new rule requirement, the Court had imposed on him to require him to prove exhaustion of a rule that was not in existence during the time of filing the complaints and trying to appeal same. Particularly where the prison warden had provided a sworn affidavit to the Court informing it that there was no rule requiring Madyun to appeal a rejected complaint to her back in March of 2002. See Affidavit of Judy P. Smith, dated Aug. 25, 2005. Madyun appealed the December 27, 2005, decision to the Seventh Circuit filed under Madyun V. Lemon et al., Case No. 06-1310 challenging the dismissal of his case for failure to exhaust a rule that was not in existence. Cited also as Madyun v. Cook, et al., 204 Fed. App'x 547, 2006 WL 2053466 (7th Cir. 2006). The Seventh Circuit dismissed, affirming the district court's decision. Because that case was dismissed for Petitioner's failure to exhaust his administrative remedies rather than on the merits, the case was not barred under the doctrine of claim preclusion. Madyun then filed a second lawsuit by returning to

the Western District Court after again trying to file another round of complaints with the DOC to exhaust the administrative remedy that was not in existence when he first initiated his complaints in February of 2002. Wisconsin DOC rejected the complaint as being untimely filed, and Madyun filed another lawsuit under Madyun v. Smith, Case No. 07-C-318-C before Judge Barbara Crabb. On July 31, 2007, Judge Crabb granted leave to proceed against 16 of the allegations made in his civil rights complaint. On December 27, 2007, Judge Crabb severed the single lawsuit into nine different lawsuits destroying Madyun's ability to continue with his conspiracy charge. After two jury trials on two cases severed, Madyun v. Cook, 08-CV-30-bbc, and Madyun v. Linjer, 08-CV-32-bbc, Judge Crabb dismissed the entire case, alleging a failure to exhaust administrative remedies, and based her decision on Judge William Griesbach's order in Case No. 06-1310. Madyun appealed that dismissal and all related issues to the Seventh Circuit Court of Appeals. Due to the fact that Judge Barbara Crabb relied solely on the decision and order of Judge Griesbach's order dismissing for failure to exhaust, Madyun filed a motion with the Seventh Circuit court of Appeals to Recall that Mandate issued on July 24, 2006, in Case No. 06-1310 affirming the District Court of Wisconsin in Case No. 04-C-343, in previously filed Madyun v. Cook et al., filed on August 31, 2009. On September 16, 2009, the Seventh Circuit Court of Appeals denied the motion. On October 9, 2009, the Court again affirmed the decision by Judge Barbara Crabb to dismiss the case for failing to exhaust. On October 28, 2009, Madyun filed a petition for Rehearing and Petition for Rehearing En Banc, and posed the question

contained within the Writ of Certiorari now being presented to this Supreme Court. On December 15, 2009, Rehearing En Banc was denied. (Pet. App. 40a)

B. Basis For Supreme Court Jurisdiction

This case raises a question of interpretation of Due Process and a prisoner's right to have access to the Courts to seek redress by utilizing 42 U.S.C. § 1983 after Amendment § 1997e(a), was passed to include the language "Available Remedies" requirement as part of exhaustion. The Court needs to address the issue of unavailable remedies being used to deny prisoners a right to file suit in federal court. The District Court had jurisdiction under the general question jurisdiction conferred by 28 U.S.C. § 1331.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

A. Conflicts With Decisions Of Other Courts And Conflicts With Previous Rulings That The Seventh Circuit Has Made In The Past.

The holding of the Seventh Circuit court of Appeals in this case requiring a prisoner, Madyun, to prove exhaustion of unavailable Administrative Remedies before he can file a 42 U.S.C. § 1983 Civil Rights Lawsuit is directly contrary to the holdings in Booth v. Churner, 532 U.S. 731 (2001) on "available remedies"; Brengettcy v. Horton, 423 F.3d 674 (7th Cir. 2005) on prisoners being beaten by Correctional Officers and exhaustion being waived; Perez v. Wis. Dept. of Corr., 182 F.3d 532 (7th Cir. 1999); and

Teague v. Lane, 489 U.S. 288 (1989), on whether this case announces a new rule declaring Amendment § 1997e(a) to include remedies that were not available for exhaustion purposes at the time a prisoner filed his original complaint.

B. Importance Of The Question

This case presents a fundamental question of the interpretation of this Court's decision in Booth v. Churner, supra, and its ruling in Teague v. Lane, supra. The question presented is of great importance because it affects the operations of prison systems in all fifty states, the District of Columbia, and hundreds of city and county jails. In view of the large amount of litigations over prisons and jails and their complaint system and available remedies each jail or prison has to offer to allow for exhaustion of available administrative remedies, guidance on the question of exactly what is meant by "available" remedies as is stated in 42 U.S.C. § 1997e(a) is important to the judiciary. In addition, the question is of great importance to prisoners, as it affects their ability to receive a fair decision in courts where exhaustion of "available" remedies are required, but if courts are permitted to apply newly promulgated exhaustion rules of the DOC that were not in existence when a prisoner filed his compliant at the jails, prisons, or lock ups, and those rules have expiration dates as to when the prisoner must file, and the courts can hold that expiration date against a prisoner applying it to the old procedure, then prisoners can be forever denied a right to file a suit against prison staff or DOC if he cannot do the impossible of looking in the future and knowing what new rules will be coming, or knowing to do an

act even though there was previously no rules requiring him to do so, and no avenue allowing for it to be done.

The issue of importance is enhanced by the fact that the 7th Circuit, and District Courts (Eastern and Western) in this case has seriously misinterpreted Booth v. Churner, 532 U.S. 731 (2001), which requires exhaustion of "available" remedies, and Johnson v. Litscher, 260 F.3d 826, 829 (7th Cir. 2001), which clarify that exhaustion is required where there is an administrative remedy to exhaust. Likewise, misinterpreting Lewis v. Washington, 300 F. 3d 829, 833 (7th Cir. 2002); and Underwood v. Wilson, 151 F.3d 292, 295 (5th Cir. 1998), which dictates that an inmate is deemed to have exhausted his administrative remedy "when the time limits for the prison's response set forth in the Prison Grievance Procedures have expired". This is particularly so when the records demonstrate that the Eastern District of Wisconsin on November 29, 2004, relied on that case precedence when it admitted crucial facts that Madyun did in fact file his timely complaint on the beating he suffered. See A.V. at p. 4-5.

The common sense understanding of "available" remedies is that there is an available remedy during the time the prisoner is to begin his or her exhaustion procedure, and nothing in Johnson, supra, or Underwood and Lewis, supra, suggest otherwise. Which brings to question the methods used by the District Courts, and affirmed by the Seventh Circuit Court of Appeals, that prisoners, such as Madyun can be held to a different standard not recognized or intended by the passing of 42

U.S.C. § 1997e(a) requiring that incarcerated persons first exhaust all "available" administrative remedies before they can bring a lawsuit to court. Nothing in 42 U.S.C. § 1997e(a) required a prisoner to exhaust remedies that were not available, or required a prisoner to return after he has completed his timely round of exhaustions to exhaust matters that have obviously been time barred due to the new policy coming long after the expiration date of the original time period of initial filing requirements. Both Lewis and Underwood both agree that the requirement of having a prisoner exhaust remedies, is that there must be a remedy to exhaust at a specific time. And neither cases cited supra, remotely suggest that a prisoner who exhausts remedy timely under what is currently available, must return eleven months later after a New Rule is promulgated requiring the inmate to now do additional steps in the complaint process within a ten day period, to timely do the new procedure within that ten days, but make it timely from the initial filing eleven months prior to the passing of the new rule. This was an impossible requirement– neither the District Court nor the Seventh Circuit bothered to give an explanation on how it could be done. Nor were the Defendants required to explain that impossible process when they used it as a defense after personally admitting there was never a rule which required Madyun to appeal a rejected complaint in February of 2002, admitting Madyun had properly completed the only available remedy when he filed the initial complaint. Affidavit of Judy P. Smith, dated Aug. 25, 2005.

In a nutshell, this is Madyun's case:

Madyun was seriously beaten by correctional officers while at the Oshkosh Correctional Institution in February 2002. He filed a complaint a day or so later as required by the department rules which require an inmate to file a complaint within 14 calendar days. See DOC § 310.09(3) at 7th Cir. No. 08-4003, R. 22, Ex. 1a-1i, Complaint dated Feb. 28, 2002. The prison staff stamped "Rejected" on the complaint and refused to file it by assigning a file number to it as required by their own rules under DOC § 310.11(7). See 7th Cir. No. 08-4003, R. 22, Ex. 10, DOC 310, Complaint Procedures. Since there was no requirement or avenue allowing Madyun to appeal the refusal to file his complaint to the prison warden, Madyun tried to appeal the matter to the Corrections Complaint Examiner who reviews all complaints prison staff dismiss. See 7th Cir. No. 08-4003, R. 22, Exh. 8. handwritten note of Apr. 25, 2002. The CCE refused to review the complaint because a number had not been assigned to the complaint. Id. Madyun even wrote the warden letters. The only response she gave was to have officers do more physical harm to Madyun by breaking both of Madyun's wrists. There was no other available remedy that Madyun had to do in order to exhaust his administrative remedies. Madyun was moved from Oshkosh and sent to Green Bay, and eleven months after the beating incident and Madyun's filed complaints, the Wisconsin Legislature passed new legislation, whereas, under Chapter HSS § 310, was renumbered Chapter DOC § 310 under § 13.93(2m)(b)1, 2 and 7, Stat. The new chapter being created, Register November 30, 2002 No. 563, effective December 1, 2002, required a prisoner to now appeal a rejected complaint to the prison wardens. The new rules only allowed for ten

days to do that appeal. After Madyun had filed his civil rights lawsuit in the District court by filing same in the Eastern District under Madyun v. Lemon, No. 04-C-343, the Assistant Attorney General Charles Hoornstra sought to get the warden at Oshkosh, Ms. Judy Smith, who was a defendant, to go alone with falsely claiming Madyun was required to file an appeal of his rejected complaint with her. Warden Judy Smith resisted the temptation to put forth a known false defense to say Madyun was required to somehow appeal the rejected complaints to her in March of 2002. Instead, Judy Smith provided an affidavit to remove all doubt that such a policy or procedure was not in place or a rule requirement imposed on Madyun in March of 2002. See Affidavit of Judy P. Smith, dated Aug. 25, 2005. Counsel Charles Hoornstra pursued the false defense, that Madyun was required in March of 2002, to appeal the rejected complaints to the warden regardless of the new rules not being in existence at that time, but coming later on December 1, 2002, and the Eastern District Court agreed that the new rules that became effective on December 1, 2002, applied to Madyun for March 2002, and said ruling was applied without stating how it could have been timely within 10 days of March of 2002. Madyun appealed to the 7th Circuit Court of Appeals, and the 7th Circuit affirmed that he had failed to exhaust under those circumstances; and gave a false impression that filing an appeal to an unavailable remedy back in March of 2002, somehow could have been done in December of 2002, after the new rule was created. Madyun returned to the District court in Wisconsin, based on the 7th Circuit ruling, and filed a second round of complaints only to have them rejected as being filed untimely because it was not

filed within the 14 days after the incident in February of 2002. See 7th Cir. No. 08-4003, R. 22, Ex. 9, Complaint received Oct. 26, 2006, Complaint rejection dated Nov. 1, 2006; Request for Review of Rejected Complaint, signed Nov. 2, 2006; Decision on Complaint Rejection, dated Nov. 6, 2006. Madyun again returned to Federal Court by filing his Civil Rights suit again, and again demonstrating exhaustion. The Western District Court presided over by Judge Barbara Crabb then broke Madyun's suit up into nine different lawsuits without him being notified and allowed an opportunity to amend the suit in a manner to maintain his conspiracy claims. The same Defendants the Plaintiff Madyun had filed a complaint against the two complains Oshkosh stamped "rejected" on, Judge Barbara Crabb allowed Madyun to proceed against some of them with no problems of failing to exhaust administrative remedies. For instance, Carol Cook was complained about in the rejected complaint dated, April 18, 2002, which went to a jury trial under Madyun v. Carol Cook, No. 08-CV-30-bbc. See 7th Cir. No. 08-4003, R. 22, Ex. 1, Complaint dated Feb. 28, 2002, p. -4-. The same complaints the court claim Madyun failed to exhaust remedies. The Western District Court presided over the Judge Barbara Crabb again ruled in favor of the Defendants by dismissing Madyun's claims under a claim that he somehow failed to exhaust his available remedies, and she owed no difference from the previous decision issued by Judge William Griesbach in Madyun v. Lemon, No. 04-C-343, dated December 27, 2005, dismissing because Madyun could not appeal a rejected complaint due to no rule being in place at that time in 2002. (Pet. App 24a) Madyun then appealed again to the 7th Circuit Court

of Appeals under Madyun v. Linjer, 08-4003 and that court again said Madyun had failed to exhaust available remedies by appealing the rejected complaint. (Pet. App. 1a) And Madyun raised the question being asked in this Supreme Court on whether a rule not in existence at the time of filing inmate complaints can be considered a failure to exhaust if exhaustion of the complaints were completed prior to the creation of the new rules. The 7th Circuit Court of Appeals failed to address the question or provide any guidance on how it can be done. The lower court's reasoning that Madyun somehow failed to do an appeal to the rejected complaint where no rule existed at that time to do so, and the warden even signed a sworn affidavit which clearly removed any misunderstanding on the issue by requiring a prisoner to file an appeal by attaching it to something mandatory and unwritten is totally unconvincing as a justification to deny a prisoner his constitutional rights to seek redress in court. No rule was pointed to by either the Defendants or the courts to say this was the rule at that time in March of 2002. The court action was in complete conflict with this Court's ruling in Booth v. Churner, 532 U.S. 731, requiring a remedy to be available for exhaustion purposes; and it conflicts with previous rulings by the 7th Circuit Court of Appeals, Johnson v. Litscher, 260 F.3d 826 (7th Cir. 2001) which clarify that exhaustion is required where there is an administrative remedy to exhaust. When the United States Legislature passed 42 U.S.C. § 1997e(a) for incarcerated person, it did not extend that law to include rules or policies that the Department of Corrections did not have in existence, but would be passing almost one year after the initiation of the inmate filing his complaints timely

in February of 2002, only to have them not count because a Judge misunderstood what is meant by available remedies, and apply a new rule passed months later and rule that because that new rule was not used back in February of 2002, even though it was passed later in December of 2002, the prisoner is forever barred from seeking redress until he can somehow apply a December 2002 new rule to February 2002 within 14 days of February 28, 2002, until March 13, 2002. And not beyond until December 2002, when the new rule was created and became effective. The standard in 42 U.S.C. § 1997e(a) permits judges to exercise their discretion to allow prisoners to seek redress where there are no avenues available to exhaust remedies. It does not allow judges to create exhaustion problems where none exist. Both the Eastern and the Western District courts of Wisconsin and the 7th Circuit Court of Appeals have seriously misinterpreted 42 U.S.C. § 1997 e(a) and Booth v. Churner, supra, as well as Johnson v. Litscher, supra, by failing to make the crucial distinction between 'available" and "unavailable" administrative remedies to be exhausted before filing a suit in a federal court. This Supreme Court should correct this misinterpretation and make it clear that 42 U.S.C. § 1997e(a) cannot be viewed to mean a court can bar a prisoner from filing suit when it is clear that a new rule passed ten months after the prisoner has begun his legal process by dismissing the prisoner's claims when he cannot take a new rule back in time and apply it ten months before the new rule was even in existence, and do it within 14 days from the initial filing of his complaint. The Court should always stand on the side of right and human dignity. There is no dignity in asking prisoners to do the obviously impossible

task of knowing what laws would be passed ten months before they are passed, and applying them as known policy to the complaint filed. Nor is there anything right by deliberately dismissing a prisoner's claim because he cannot time travel and know what rules are to be passed and act on them before they are passed. Allowing such a ruling to stand is unduly hazardous to institutional safety and the Correctional goals intended by the U.S. Legislature when it passed 42 U.S.C. § 1997e(a) requiring a prisoner to exhaust the "available" remedies. Were it to mean unavailable remedies, the government probably would not have required any remedies at all, and simply said, all prisoners are barred from seeking redress, no matter the situation.

C. Review Of Entire Case If Necessary

This is a case where a prisoner was so harmed by Correctional Officers that eight years later he is about to have a third surgery to reconstruct his rectum in an attempt to stop the bleeding from that area which has been going on since officers ripped out his colon with a night stick, forcing the colon to heal dislodged. He was in the hospital for six months again years later because his organs almost stopped as a long term consequence from the beating. He was paralyzed. He is currently crippled. He has spinal damage. He has liver damage. He has suffered severe emotional damage. The record shows that every time he complained, the complaints were met with more harm inflicted upon him by officers working in that institution. The record will also show that the District court's decisions were based more on discouraging Madyun from seeking redress than based on the laws guaranteeing a prisoners

right to seek redress in courts for wrongs done to them while incarcerated. The records show (1) that both District Court Judges expressed their personal belief that they did not believe correctional officers would do Madyun the type of harm claimed in his civil complaint, and the record does appear to suggest that belief was the driving force for those courts to dismiss Madyun's case, rather than abiding by the law of 42 U.S.C. § 1997e(a) on "available" remedies, the court created an "unavailable" remedy to justify dismissing the case; (2) the Court then destroyed Madyun's ability to present his conspiracy claims. It broke the single case up into nine different cases and forced Madyun to either repay nine court costs of $450.00 on each case or have the case dismissed. Madyun was not allowed to amend his filed complaint to save his conspiracy claims; (3) the District Court then assigned a case that did not exist, stating that if Madyun was to appeal the severance issue it had to be done through the case identified by the Court. It was impossible for Madyun to appeal the severance via a case not in existence; (4) Madyun was denied any rights to call witnesses during the jury trial; (5) Madyun was denied any rights to receive any discovery, or interrogatories he motioned for; (6) when Madyun was required to respond to Defendant's defense motions, Defendants confiscated all of Madyun's files to prevent his ability to respond. Madyun filed a temporary restraining order seeking to have those files retuned to allow him to properly respond. The District court denied the request and told Madyun he had nothing coming, and required him to respond without a record, then dismissed his case by granting Summary Judgment to the Defendant because Madyun could not properly respond with the

documented evidence the Defendants were withholding from the Court and Madyun; (7) during the pre-trial states Madyun motioned the Court to postpone the trial because he was scheduled for surgery. The District court denied the request and forced Madyun to defend by prosecuting his case while he was bleeding from the rectum and in a great deal of pain and unable to concentrate on matters that involved the jury trial; (8) Madyun asked for an attorney to be appointed to assist him under those circumstances, and was denied both times. Because of the exhaustion issue in this case, none of the above issues have been addressed by the lower courts.

CONCLUSION

For the foregoing reasons, Certiorari should be granted in this case, and the case remanded to start all over as once case.

Submitted by:

Shaheed Madyun #75225
KMCI Inmate Mail
PO Box 282
Plymouth, WI 53073-0282

Petitioner pro se